

JANETTE K. BRIMMER (WSB #41271)
STEPHANIE K. TSOSIE (WSB #49840)
(*Pro Hac Vice Admission*)

Earthjustice
705 Second Avenue, Suite 203
Seattle, WA 98104-1711
(206) 343-7340 | Phone
(206) 343-1526 | Fax
jbrimmer@earthjustice.org
stsosie@earthjustice.org

ALBERT ETTINGER (IL ARDC#3125045)
(*Pro Hac Vice Admission*)
53 W. Jackson, #1664
Chicago, IL 60604
(773) 818-4825 | Phone
ettinger.albert@gmail.com
Attorneys for Plaintiff Upper Missouri Waterkeeper

KATHERINE O'BRIEN (MSB #13587)
Earthjustice
313 East Main Street
Bozeman, MT 59715-6242
(406) 586-9699 | Phone
(406) 586-9695 | Fax
kobrien@earthjustice.org
Local Counsel for Plaintiff Upper Missouri Waterkeeper

UNITED STATES DISTRICT COURT
DISTRICT OF MONTANA
GREAT FALLS DIVISION

UPPER MISSOURI WATERKEEPER,)	No. 4:16-cv-00052-BMM
)	
Plaintiff,)	JOINT CASE MANAGEMENT
)	DOCUMENT
v.)	
)	
UNITED STATES ENVIRONMENTAL)	

PROTECTION AGENCY and GINA)
McCARTHY, Administrator, United States)
Environmental Protection Agency,)
)
Defendants,)
)
and)
)
STATE OF MONTANA DEPARTMENT)
OF ENVIRONMENTAL QUALITY,)
TREASURE STATE RESOURCE)
ASSOCIATION OF MONTANA,)
MONTANA LEAGUE OF CITIES AND)
TOWNS, and NATIONAL ASSOCIATION)
OF CLEAN WATER AGENCIES,)
)
Intervenor-Defendants.)

Pursuant to the Court’s Order on September 15, 2016, counsel for Plaintiff Upper Missouri Waterkeeper; counsel for U.S. Environmental Protection Agency and Gina McCarthy (“EPA” or “Defendants”); and counsel for Defendant-Intervenors Treasure State Resources Association of Montana (“Treasure State”), State of Montana Department of Environmental Quality (“Montana”), Montana League of Cities and Towns (“League of Cities”), and National Association of Clean Water Agencies (“NACWA”), have conferred on matters listed in Fed. R. Civ. P 26(f). The parties have reached agreement on most scheduling matters but remain unable to reach agreement on certain details of summary judgment briefing. The differing proposals are set forth below.

Counsel for the parties agree that settlement of this case is not likely at this time. The parties, however, will continue to explore opportunities for settlement while the matter is pending, and one or more parties may seek a Court-sponsored settlement conference during the course of the case. All parties reserve their right to oppose such a settlement conference.

The parties agree that this case should be resolved based on review of the administrative record and through motions for summary judgment. As such, the parties do not anticipate the need for discovery, and therefore request, pursuant to Local Rule 16.2(a)(1), that this matter be considered exempt from the requirement to file a Preliminary Pretrial Statement, a Discovery Plan, and a Statement of Stipulated Facts.

The parties have also agreed on the following proposed deadlines:

1. Motion to Dismiss – Neither the Defendants nor Defendant-Intervenors anticipate filing a motion to dismiss (other than as part of the cross-motions for summary judgment referenced below) and therefore agree that a deadline for filing a motion to dismiss is not necessary.

2. Certification of the Administrative Record – On or before December 2, 2016, EPA will lodge the administrative record in electronic, indexed, and searchable format. The Defendants will serve a copy of the administrative record on counsel for Plaintiffs and Defendant-Intervenors on or before that date.

3. Motion to Supplement and/or Complete the Administrative Record –

After the Defendants lodge the administrative record, the parties will endeavor to resolve any disputes concerning the contents of the record or the evidence properly at issue in these proceedings. If these efforts are unsuccessful, any motion objecting to the contents of the records or seeking to complete, supplement, or augment the record with any documents, declarations, or other evidence will be filed on or before December 13, 2016.

4. Motion to Amend the Pleadings – Plaintiff anticipates that an amendment to the Complaint is unlikely, but reserves the ability to move to amend based upon the administrative record lodged on or before December 2, 2016. Any motion to amend the Complaint will be filed on or before December 13, 2016. The parties note that a revised summary judgment briefing schedule may be necessary in the event there is an amended complaint or motion practice over the completeness of the administrative record. The Defendants and Defendant-Intervenors reserve their right to oppose any motion to amend the Complaint.

5. Motions for Summary Judgment – The parties anticipate cross-motions for summary judgment and will endeavor to be efficient in the briefing. Because the parties will be both making and responding to motions and based upon the complexity of the case, some, but not all, of the parties also propose and request certain increases in the word limits normally allowed under the Local Rules

for the District of Montana. The increased word limits jointly requested by the Plaintiff and Federal Defendant are based in part on the length of briefs permitted under the Federal Rules of Appellate Procedure. The parties have conferred but have been unable to agree on all details of the briefing schedule, particularly with regard to whether Treasure State, League of Cities, and/or NACWA should be required to file consolidated briefs, and the word count limits for such briefs.

All parties agree that Defendant-Intervenor Montana should be entitled to file a separate brief in opposition to Plaintiff's motion for summary judgment, in support of Montana's cross-motion for summary judgment, and a reply brief in support of Montana's cross-motion for summary judgment.

a. Briefing Schedule Proposed by Plaintiff, Federal Defendant ("EPA"), and State of Montana

The Plaintiff, EPA, and Defendant-Intervenor State of Montana propose a briefing schedule as set forth below. Oppositions to Plaintiff's motion for summary judgment and cross-motions for summary judgment to be filed by Defendant-Intervenors would be slightly staggered under this proposal after EPA files its summary judgment papers, so that Defendant-Intervenors may review EPA's response to Plaintiff's motion for summary judgment and EPA's cross-motion for summary judgment before filing their briefs in order to reduce duplication in the briefing.

Plaintiffs' Motion for Summary Judgment	December 21, 2016	12,000 words
Defendants' Opposition and Cross-Motion for Summary Judgment	60 days after filing of Plaintiff's Opening Brief	12,000 words
Defendant-Intervenor State of Montana Opposition and Cross-Motion for Summary Judgment	20 days after Defendants' Opening Brief	8,000 words
Defendant-Intervenors' Treasure State Resources Association of Montana, Montana League of Cities and Towns, and National Assoc. of Clean Water Agencies' Single Consolidated Opposition and Cross-Motion for Summary Judgment	20 days after Defendants' Opening Brief	5,000 words
Plaintiff's Opposition and Reply	30 days following filing of last Intervenor brief	15,000 words
Defendants' and Defendant-Intervenors' Replies (with consolidated reply from Defendant Intervenor's Treasure State Resources, League of Cities and Towns and National Assoc. of Clean Water Agencies)	30 days following Plaintiff's final Opposition and Reply	7,000 words for Federal Defendant; 4,000 words for State of Montana, 3,000 words for consolidated intervenors' brief

Under the briefing schedule proposed by Plaintiff, EPA, and Montana, Plaintiff's briefing will total 27,000 words. Defendants and Defendant-Intervenors combined briefing will total 39,000 words.

b. Separate Statement by Intervenor Treasure State, League of Cities, and NACWA Regarding Briefing Schedule

Defendant-Intervenor Treasure State Resources, League of Cities, and NACWA separately state that each Defendant-Intervenor is entitled to file a separate brief in opposition to Plaintiff's motion for summary judgment and in support of its cross-motions for summary judgment, and separate reply briefs in support of its cross-motions for summary judgment and propose the following:

Plaintiffs' Motion for Summary Judgment	December 21, 2016	6,500 words
Defendants' Opposition and Cross-Motion for Summary Judgment	60 days after filing of Plaintiff's Opening Brief	12,000 words
Defendant-Intervenor State of Montana Opposition and Cross-Motion for Summary Judgment	30 days after Defendants' Opening Brief	8,000 words
Defendant-Intervenor's Treasure State Resources Association of Montana, Montana League of Cities and Towns, and National Assoc. of Clean Water Agencies' Single Consolidated Opposition and Cross-Motion for Summary Judgment	30 days after Defendants' Opening Brief	6,500 words
Plaintiff's Opposition and Reply	30 days following filing of last Intervenor brief	3,250 words
Defendants' and Defendant-Intervenor's Replies	30 days following Plaintiff's final Opposition and Reply	7,000 words for Federal Defendant; 4,000 words for State of

		Montana, 3,250 words for Treasure States 3,250 words for League 3,250 words for NACWA
--	--	---

Under the briefing schedule proposed by Defendant-Intervenors Treasure State Resources, League of Cities, and NACWA, Plaintiff's briefing will total 9,750 words. Defendant's and Defendant-Intervenors' combined briefing will total 60,250 words.

6. Additional Deadlines Agreed to by the parties – The parties do not propose any additional deadlines not set forth above.

Respectfully submitted this ____ day of October 2016.

[ADD SIGNATURE BLOCKS FOR EACH PARTY]

JANETTE K. BRIMMER (WSB #41271)
STEPHANIE K. TSOSIE (WSB #49840)
(Pro Hac Vice Admission)
Earthjustice
705 Second Avenue, Suite 203
Seattle, WA 98104-1711
(206) 343-7340 | Phone
(206) 343-1526 | Fax
jbrimmer@earthjustice.org
stsosie@earthjustice.org

KATHERINE O'BRIEN (MSB #13587)

Earthjustice

313 East Main Street

Bozeman, MT 59715-6242

(406) 586-9699 | Phone

(406) 586-9695 | Fax

kobrien@earthjustice.org

Local Counsel for Plaintiff Upper

Missouri Waterkeeper

ALBERT ETTINGER (IL ARDC#3125045)

(Pro Hac Vice Admission)

53 W. Jackson, #1664

Chicago, IL 60604

(773) 818-4825 | Phone

ettinger.albert@gmail.com

Attorneys for Plaintiff Upper

Missouri Waterkeeper